

BEFORE THE BOARD OF MEDICAL EXAMINERS  
OF THE STATE OF CALIFORNIA

In the Matter of the Accusation of )  
JOSEPH KEVIN KELLY, M.D.,  
Respondent

NO. D-490

DECISION

The attached Proposed Decision of the Hearing Officer  
is hereby adopted by the Board of Medical Examiners as its  
decision in the above entitled matter.

This decision shall become effective on the

10th day of August, 1959.

IT IS SO ORDERED this 10th day of July, 1959.

BOARD OF MEDICAL EXAMINERS  
OF THE STATE OF CALIFORNIA

BY:

*Louis E. Jones*  
LOUIS E. JONES, M.D.,  
Secretary

fmt/jc

BEFORE THE BOARD OF MEDICAL EXAMINERS  
OF THE STATE OF CALIFORNIA

In the Matter of the Accusation of  
JOSEPH KEVIN KELLY, M.D.,  
Respondent

NO. D-490

PROPOSED DECISION

This matter came on regularly for hearing before Frank M. Towner, Hearing Officer of the Division of Administrative Procedure, at 9:30 a.m., on June 23, 1959, at Los Angeles, California. Arthur L. Martin, Deputy Attorney General, appeared as counsel for the Board. The respondent appeared by his counsel, Dennison, Dietrich and Anderson, by Walter N. Anderson. Upon motion of counsel for the Board, the charges in paragraph IV of the Accusation were dismissed. Evidence, both oral and documentary, having been received, the Hearing Officer finds the following facts:

I

Robert Truitt is a Special Investigator for the Board of Medical Examiners of the State of California, and made the Accusation herein in his official capacity as such and not otherwise.

II

The respondent, Joseph Kevin Kelly, was heretofore issued a license to practice medicine and surgery in the State of California by the Board of Medical Examiners.

III

On or about July 25, 1958, in a case then pending in the Superior Court of the State of California, in and for the County of Los Angeles, entitled, "The People of the State of California,

Plaintiff, vs J. Kevin Kelly, Defendant," No. 203485, respondent was found guilty of two counts of violating Section 11170 (1)(a) of the Health and Safety Code (obtaining a narcotic by fraud, misrepresentation and subterfuge). On or about August 29, 1958, said proceedings were suspended and respondent was granted probation for three years on condition, inter alia, that he pay a fine of \$500.00; not have any narcotics in his possession until so licensed; narcotic's license to be surrendered to State Narcotics Board.

IV

From on or about January 19, 1958, through April 1, 1958, the respondent used the narcotic drug known as codeine on approximately twenty-two occasions. Said codeine was in the form of emperin-codeine No. 3 tablets, obtained from the narcotic supplies of a Los Angeles hospital where respondent was employed as a staff doctor.

V

During the period from about April 4, 1958, until about May 1, 1958, the respondent used and administered to himself, morphine sulphate and demerol. On or about May 4, 1958, respondent used and administered cocaine to the extent and in sufficient manner as to be dangerous to himself and so as to impair his ability to conduct with safety to the public the practice of medicine.

VI

The respondent made the following showing:

1. He is currently residing in the State of New York where he holds a license to practice medicine and where he is voluntarily confined to a Veterans Administration hospital for treatment of an emotional disorder.
2. He has surrendered his narcotic permit to the proper authorities.
3. His father is a medical doctor in the State of New York, and is assisting him in his effort toward rehabilitation.

4. Some of the emperin-codeine used by him was to relieve the pain from a kidney ailment.

\* \* \* \* \*

Pursuant to the foregoing findings of fact, the Hearing Officer makes the following determination of issues:

I

The respondent has been convicted of crimes involving moral turpitude, which were also violations of the statutes of this State regulating narcotics, constituting unprofessional conduct as defined in Sections 2383 and 2384 of the Business and Professions Code, which is grounds for disciplinary action pursuant to Sections 2360 and 2361 of said Code.

II

The respondent is guilty of unprofessional conduct as defined in Section 2390 of the Business and Professions Code, in that he has used and administered to himself narcotic substances set forth in said section, and has used narcotics in such manner as to be dangerous to himself and to the public, and as to impair his ability to conduct with safety to the public the practice of medicine, which is cause for disciplinary action under Sections 2360 and 2361 of said Code.

III

The respondent's showing has been considered in mitigation of the penalty herein.

\* \* \* \* \*

WHEREFORE, THE FOLLOWING ORDER is hereby proposed:

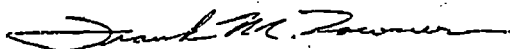
The license, heretofore issued to respondent by the Board of Medical Examiners, to practice medicine and surgery in the State of California is hereby revoked; provided, however, execution of this order of revocation is hereby stayed and the respondent is placed on probation for a period of five years upon the following terms and conditions:

During the period of probation herein fixed:

1. Respondent shall not during the first 90 days immediately following the effective date of this decision exercise any of the rights and privileges granted to him by his license to practice medicine and surgery.
2. The respondent shall not renew nor attempt to renew his Federal Narcotic Permit except upon written approval of the Board of Medical Examiners.
3. Prior to exercising within the State of California any of the rights and privileges granted to him by his license to practice medicine, the respondent shall report in person to the Board of Medical Examiners at one of its regular meetings; and thereafter, as long as he continues to exercise any such rights or privileges within this State, the respondent shall report in person to the Board of Medical Examiners annually at its regular summer meetings held in Los Angeles, California.
4. The respondent shall comply with all laws of the United States and of the State of California and its political subdivisions, and with the rules and regulations of the Board of Medical Examiners.
5. The respondent shall completely abstain from the use of narcotics, hypnotics or dangerous drugs in any form, except when respondent is a bona fide patient of a licensed physician and surgeon and the same is lawfully prescribed for him.
6. The respondent shall file with the Board of Medical Examiners, at quarterly intervals, an affidavit to the effect that he has fully and faithfully complied with all the terms and conditions of probation imposed herein.

Upon full compliance with the terms and conditions herein set forth, and upon expiration of the term of probation, respondent's said license shall be restored to its full privileges, free and clear of the terms of probation herein imposed; provided, however, that in the event respondent violates or fails to comply with any of the terms or conditions of this order during said period of probation, the Board, upon receipt by it of satisfactory evidence thereof, may forthwith terminate said probation, cancel and revoke said stay of execution and direct that the order of revocation herein made shall become effective.

I hereby submit the foregoing which constitutes my proposed decision in the above entitled matter, as a result of the hearing had before me on June 23, 1959, at Los Angeles, California, and recommend its adoption as the decision of the Board of Medical Examiners.



DATED: June 25, 1959

FRANK M. TOWNER, Hearing Officer

REDACTED

1 STANLEY MOSK, Attorney General  
2 ARTHUR L. MARTIN,  
3 Deputy Attorney General  
4 600 State Building  
5 Los Angeles 12, California

6 Attorneys for  
7 BOARD OF MEDICAL EXAMINERS  
8 OF THE STATE OF CALIFORNIA

9 BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE  
10 DEPARTMENT OF PROFESSIONAL AND VOCATIONAL STANDARDS  
11 OF THE STATE OF CALIFORNIA

12 In the Matter of the Accusation of } NO. D-490  
13 JOSEPH KEVIN KELLY, M.D., } ACCUSATION  
14 Respondent. }

15 Complainant, Robert J. Truitt, alleges that:

16 I

17 He is a Special Investigator for the Board of  
18 Medical Examiners of the State of California and makes this  
19 accusation in such official capacity.

20 II

21 Respondent, Joseph Kevin Kelly, was heretofore  
22 issued by said Board a license to practice medicine and surgery  
23 in the State of California.

24 III

25 Respondent, Joseph Kevin Kelly, has been guilty of  
26 unprofessional conduct as defined in §§ 2383 and 2384 of the  
27 Business and Professions Code, grounds for disciplinary action  
28 pursuant to §§ 2360 and 2361 of said code, in that:

29 On or about July 25, 1958 in a case then pending  
30 in the Superior Court of the State of California, in  
31 and for the County of Los Angeles, entitled: "The



1 People of the State of California, Plaintiff,  
2 v. J. Kevin Kelly, Defendant", No. 203485,  
3 respondent was found guilty of two counts of  
4 violating § 11170(1)(a) of the Health and Safety  
5 Code (obtaining a narcotic by fraud, misrepre-  
6 sentation and subterfuge). On or about August  
7 29, 1958 said proceedings were suspended and  
8 respondent was granted probation for three years  
9 on conditions, inter alia, that he pay a fine of  
10 \$500; not have any narcotics in his possession  
11 until so licensed; narcotics license to be  
12 surrendered to State Narcotics Board.

13 Said convictions are of statutes of this  
14 state regulating narcotics and are of crimes  
15 involving moral turpitude.

16 IV

17 Respondent has been guilty of unprofessional conduct  
18 contrary to the provisions of §§ 2361, 2390 and 2391.5 of the  
19 Business and Professions Code and in violation of §§ 11165,  
20 11167, 11168, 11170 and 11225 of the Health and Safety Code,  
21 in that:

22 Respondent wrote and issued the following  
23 prescriptions for narcotics to the following named  
24 persons but said narcotics and prescriptions were  
25 not solely for the persons named in said prescriptions.  
26 On the contrary, all or a portion of the narcotics  
27 so prescribed were in each instance actually secured  
28 for and used by respondent for his own use and self-  
29 administration.  
30  
31



NAME	PRESCRIPTION NUMBER	DATE	NARCOTIC & QUANTITY
Rene T. [REDACTED]	NN 34078 (Drug Store No. 558653)	3-29-58	Morphine sulphate 20 cc vial, 1/4 gr.
Sunny Lane L. [REDACTED]	(Drug Store No. 92520)	4-30-58	25 tablets contain- ing 1/2 gr. codeine per tablet
Jacqueline H. [REDACTED]	(Drug Store No. 90713)	4-4-58	25 tablets contain- ing 1/2 gr. codeine per tablet

V

Respondent has been guilty of unprofessional conduct as defined in § 2390 of the Business and Professions Code, in that:

From on or about January 19, 1958 through about March 27, 1958 respondent used, prescribed for and administered to himself the narcotic drug, codeine, on 28 separate occasions. Said narcotics were obtained from the narcotic supplies of the Bon-Air Hospital, 250 West 120th Street, Los Angeles, California.

VI

Respondent has been guilty of unprofessional conduct as defined in § 2390 of the Business and Professions Code, in that:

From on or about April 1, 1958 through on or about May 4, 1958 respondent used and administered to himself narcotics, to wit: morphine sulphate and demerol. On or about May 3, 1958 said use and administration was to the extent and in such a manner so as to be dangerous to himself and to the public and so as to impair his ability to conduct with safety to the public the practice of medicine.

1            THEREFORE, complainant requests that the Board hold  
2 a hearing on the charges herein contained and take disciplinary  
3 action as provided by §§ 2361 and 2372 of the Business and  
4 Professions Code of the State of California and suspend or  
5 revoke respondent's license to practice medicine and surgery  
6 in the State of California, and for such further relief as  
7 the said Board may deem proper.

8            DATED: This 6<sup>th</sup> day of April, 1959.

9  
10            Robert J. Truitt  
11 ROBERT J. TRUITT, Special Investigator  
12 for the BOARD OF MEDICAL EXAMINERS  
13 OF THE STATE OF CALIFORNIA,

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
Complainant.

ALM:map  
ADM LA  
58-360  
4-2-59

CELEST  
SEARCHED INDEXED  
SERIALIZED FILED  
APR 1959  
FBI - LOS ANGELES